

Filed 5/11/06 by Clerk of Supreme Court
IN THE SUPREME COURT
STATE OF NORTH DAKOTA

2006 ND 95

State of North Dakota,

Plaintiff and Appellee

v.

LeRoy Kenneth Wheeler,

Defendant and Appellant

Nos. 20050257 - 20050259

Appeal from the District Court of Grand Forks County, Northeast Central
Judicial District, the Honorable Debbie Gordon Kleven, Judge.

AFFIRMED AND REMANDED.

Per Curiam.

Mark Jason McCarthy, Assistant State's Attorney, P.O. Box 5607, Grand
Forks, N.D. 58206-5607, for plaintiff and appellee.

LeRoy K. Wheeler, pro se, P.O. Box 5521, Bismarck, N.D. 58506-5521,
defendant and appellant.

State v. Wheeler
Nos. 20050257-20050259

Per Curiam.

[¶1] Leroy Wheeler appeals from criminal judgments for gross sexual imposition, encouraging the deprivation of a minor, and contributing to the delinquency of a minor.

[¶2] Wheeler argues: (1) there is insufficient evidence to support the conviction; (2) the district court erred in denying his request for a hearing under Franks v. Delaware, 438 U.S. 154 (1978), to suppress evidence seized during a search because the search warrant was based on false statements made to the magistrate; (3) the court erred in denying his motion to dismiss; (4) the court erred in denying his request for a change of judge; (5) his rights were violated by the court's denial of his request to see the random jury draw; (6) his right to an impartial jury was violated when he was forced to keep a predisposed jury panel and he was forced to use his peremptory challenges on jurors who should have been excused for cause; (7) the court erred in denying his request for a directed verdict of acquittal; (8) the court erred in denying his motion for a new trial; (9) the judgments entered were unlawful; and (10) the court erred in denying his request to correct the record. Wheeler also argues he did not receive a fair trial because: (1) he was not allowed to offer an alternative explanation for the victim's medical condition because he was denied access to the medical school and Chester Fritz libraries; (2) he was denied the ability to prepare his witnesses for trial; (3) an ex parte suppression hearing was held; (4) the prosecutor presented undisclosed evidence explaining the victim's medical condition; (5) the prosecutor presented perjured testimony from law enforcement officers; (6) the prosecutor asked leading questions on direct examination; and (7) the prosecutor made improper arguments and comments to the jury.

[¶3] Wheeler argues the district court judgments were unlawful because the judgments state Wheeler entered a plea of guilty when he was actually found guilty by a jury. Although Wheeler did not enter a plea of guilty, the judgments are not unlawful. See State v. Marshall, 1999 ND 242, ¶ 11-12, 603 N.W.2d 878. Rule 36, N.D.R.Crim.P., provides, "[a]fter giving any notice it considers appropriate, the court may at any time correct a clerical error in a judgment, order, or other part of the record, or correct an error in the record arising from oversight or omission." The

clerical error in the judgments appears to be an oversight by the district court. We remand to allow the court to correct the judgments so that they accurately reflect the proceedings.

[¶4] We have considered all other issues Wheeler raised and conclude that they are completely without merit. We summarily affirm under N.D.R.App.P. 35.1(a)(1) and (3).

[¶5] Gerald W. VandeWalle, C.J.
Mary Muehlen Maring
Daniel J. Crothers
Dale V. Sandstrom
Carol Ronning Kapsner